



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: St. Louis Conveyor Company, Inc.
File: B-232251.2
Date: September 16, 1988

DIGEST

Protest based on solicitation defect filed after the closing date for receipt of initial proposals is untimely. Agency decision to open discussions with protester allowing it to correct a deficiency in its proposal did not, as the protester argues, in effect extend the closing date for receipt of initial proposals so as to then allow the filing of a timely protest against the original solicitation defect.

DECISION

St. Louis Conveyor Company, Inc., protests the bonding requirements of request for proposals (RFP) No. DLA410-88-R-2775, issued by the Defense Logistics Agency (DLA) for a mechanized material handling system.

We dismiss the protest.

The RFP was issued on April 4, 1988, as a small business set-aside. The agency amended the solicitation on May 2 to require bid and performance bonds. According to DLA, the bonds were required because of the progress payments that would be made to the contractor prior to the delivery of the handling system. St. Louis Conveyor submitted its proposal without the required bid bond and the contracting officer rejected it as nonresponsive.

St. Louis Conveyor previously protested to our Office that the bond requirement was overly restrictive and that its proposal was improperly rejected as nonresponsive. The protest requested that the bond requirement be deleted or reduced or alternatively that the protester be allowed the opportunity to remedy the deficiency in its proposal by providing the required bond. DLA reversed its rejection of the protester's proposal as "nonresponsive" and granted St. Louis Conveyor 10 days in which to provide the bond. We

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dismissed that initial protest as academic because the agency granted the relief requested by the protester. B-232251, Sept. 1, 1988.

St. Louis Conveyor now states that it can not obtain the bond and again contends that the bonding requirement is overly restrictive. The protester argues that this protest of the bonding requirement is timely because by allowing it 10 days to obtain the bond, DLA in effect extended the closing date for receipt of initial proposals.

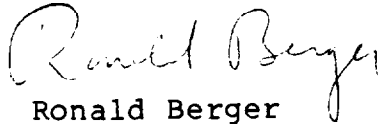
We do not believe that DLA's actions make St. Louis Conveyor's second protest timely. The agency merely opened discussions with the protester to allow it to correct a deficiency in its proposal. The agency did not change the solicitation requirements after the initial closing date. While protests of solicitation improprieties which are later incorporated into the solicitation by amendment may be filed not later than the next closing date, Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988), the bonding requirement to which St. Louis Conveyor objects was in the solicitation prior to the initial closing date and must have been protested prior to that time.

In this respect, we note that St. Louis Conveyor's original protest of the bond requirement to our Office was untimely. The firm originally filed its protest with the agency along with its proposal on July 15, the closing date for receipt of initial proposals. Our regulations require protests based on apparent solicitation defects to be raised prior to closing. 4 C.F.R. § 21.2(a)(1).^{1/} As a general rule, we do not regard an allegation included with a proposal as a timely protest to the agency, since there is no requirement that an agency open or read proposals on or before the closing date. East Norco Joint Venture, et al., B-224022 et al., Jan. 5, 1987, 87-1 CPD ¶ 6. Although the protester states that it was told by a DLA employee that an objection to the bond requirement could be lodged at the time of submission of proposals, the agency denies that its employee gave the protester such advice. In any event, the fact that a protester may have been misled by the agency does not alter the untimeliness of its protest since we consider protesters to be on constructive notice of our regulations

^{1/} Protests that are filed initially with the contracting agency will not be considered by our Office unless the agency-level protest is timely filed in accordance with our regulations. 4 C.F.R. § 21.2(a)(3).

because they are published in the Federal Register and the Code of Federal Regulations. Pacific Propeller, Inc.,
B-229868, Dec. 30, 1987, 87-2 CPD ¶ 649.

The protest is dismissed.

A handwritten signature in cursive script, reading "Ronald Berger".

Ronald Berger
Deputy Associate
General Counsel